

Remarks/Arguments

Claims 3-4, 8-10, 12-16, 18-21 and 24-29 are now pending in this Application. Claims 2, 5-7, 11, 17 and 22-23 were previously canceled. Claims 1, 4, and 9-10 are hereby cancelled.

Claim 29 is added to better claim Applicants' invention. Claims 3, 8, 12-13, and 15 are amended to depend from new claim 29. Claims 16, 20, and 27 are also amended to better claim Applicants' invention. No new matter is added by way of this Amendment.

Claim Rejections under 35 U.S.C. § 103

Claims 3, 4, 8, 12-16, 18-21 and 24-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Freedman in view of U.S. Patent No. 4,580,638 to Jones et al. (Jones). Applicants respectfully traverse the rejection of the claims.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003). A rejection based on § 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art. *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967), *cert denied*, 389 U.S. 1057 (1968). In making this evaluation, the Examiner has the initial duty of supplying the factual basis for the rejection he advances. He may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Ex parte Haymond*, 41 USPQ2d 1217, 1219 (Bd. Pat. App. & Inter. 1996). Here, Applicants submit that the rejected claims all contain limitations which are not described or taught by the cited references. Further, the Examiner has failed to provide any reasonable rationale supporting the combination of references.

As discussed in great detail in previous Responses in this application, the rejected claims require that the flexible sheet be folded, rather than rolled as taught by Freedman. The rejected claims have now been amended to make this distinction even more clear. Claim 1 has been cancelled. The dependencies of claims 3, 8, and 12-15 have been amended to depend on new claim 29. These claims require that the flexible sheet be "folded into an accordion-like shape having a plurality of pleats which are alternately folded back and forth to form a plurality of overlapping layers," and that the fire suppression agent be "disposed between the overlapping

layers formed by the alternately folded plurality of pleats so that the folded flexible sheet separates the fire suppression agent into a plurality of discrete portions.” These limitations are not taught or even suggested by the cited references or by the combination of references.

Nowhere does Freedman teach a sheet folded into an accordion-like shape or discrete packets of fire suppression agent between each fold. In fact, Freedman does not teach folding the flexible sheet at all. Instead, Freedman teaches a fire extinguishing means “in the form of a roll 52” and further describes that that the roll is “rolled up” before being secured. *Freedman* at col. 2, lines 24-64 and FIGS. 1-3.

A roll is not a folded sheet. Freedman’s flexible sheet is “rolled up” into a roll, whereas the claimed flexible sheet is folded into an accordion-like shape having a plurality of pleats which are alternately folded back and forth to form a plurality of overlapping layers. The flexible sheet behaves quite differently when unfolded rather than unrolled. Applicant describes that “[t]he action of unfolding the [folded] foil slows the decent rate of the dry agent and directs the dry agent in the controlled manner covering both the front and the rear burners with the dry agent” (*Specification* at ¶ 0022 and FIG. 1). In contrast, as the roll of Freedman unwinds, “the fire extinguishing powder 54 retained between the convolutions thereof is thrown and dispersed laterally and downwardly by this unwinding action as a cloud throughout the space which the hood overlies” (*Freedman* at col. 2, lines 53-56, and FIG. 1). In other words, Freedman’s rolled sheet disperses the fire suppression agent primarily in one lateral direction. As a result, Freedman teaches two different rolls, one for the front burners and one for the back. (*See* *Freeman*, FIG. 1.) Applicants’ invention, however, the accordion-shaped folds distribute “pulses of dry agent alternately toward the front and rear burner.” (*Specification* at ¶ 0022 and FIG. 1).

As discussed in the previously submitted Declaration of Royce McKim, Freedman’s rolled flexible sheet also tends to compress the powdered fire suppression agent. Compression of the fire suppression agent causes the fire suppression agent to bind together into clumps. The occurrence of clumps in the fire suppression agent decreases the area over which the fire suppression agent is dispersed in response to a triggering event. Applicants’ folded flexible sheet eliminates the compression of the fire suppression agent, or reduces the compression of the fire suppression agent compared to Freedman’s roll. Applicants’ folded flexible sheet thereby eliminates the occurrence of clumps in the fire suppression agent, or reduces the occurrence of clumps in the fire suppression agent compared to Freedman’s roll. As a result, Applicants’

folded flexible sheet disperses the fire suppression agent over a broader area, providing an improved fire suppression capability over Freedman's roll. The improved fire suppression capability of Applicants' folded flexible sheet includes a greater likelihood that the fire suppression device will completely extinguish a fire that triggers the device and a larger effective area over which the fire suppression device can reliably extinguish triggering fires.

The Jones reference also fails to teach a flexible sheet folded into an accordion-like shape with discrete packets of fire suppression agent between each fold. Jones teaches a fire suppression system that uses a gaseous fire suppression agent (e.g., Halon 1211) for the purpose of avoiding the cleanup that would be required following the dispersal of a non-gaseous fire suppression agent, such as baking soda. Fire curtain 66 unfolds to completely surround cooking unit 10 and contain the gaseous fire suppression agent near cooking unit 10, thereby extinguishing the fire. While the fire curtain taught by Jones is folded in a loose accordion-like shape, there is no fire suppression agent between the folds. Also, as shown by Jones' FIG. 3, the layers themselves do not overlap.

Nor would a person of ordinary skill in the art have been motivated to use the curtain of Jones in the apparatus taught by Freedman since the fire curtain in Jones is not used to disperse fire suppression agent at all. Instead, Jones teaches that the fire curtain is used to contain the Halon gas, and thus teaches away from such a combination since a goal of the design in Freedman is to widely disperse the fire suppression agent.

Applicants also note that the Examiner has provided no real articulated reason justifying the modification of the Freedman reference other than the bare assertion that it would have been obvious to fold the flexible sheet "since the device will still carry out its intended function dispersing fire suppression agent regardless of whether the sheet is rolled up or folded." Final Office Action at 3.

Applicants note that the U.S. Supreme Court has expressly held that rejections on obviousness grounds "cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1740-41(2007). Further, an acceptable reason must be able to justify the combination/modification in the fashion claimed by the rejected claims. *Id.* Not only is the Examiner's conclusory rationale insufficient to sustain

an obviousness rejection, the Jones reference actually teaches away from the combination. Because Jones teaches unfolding a folded flexible sheet to contain, not disperse, a fire suppression agent, it would not have been obvious to a person having ordinary skill in the art to combine the folded sheet of Jones with the design of Freedman, which is intended to widely disperse the fire suppression agent rather than contain it.

Applicants also submit that the Examiner appears to be applying an incorrect standard to determine obviousness. The Examiner has repeatedly suggested that it does not matter that the claims require a folded flexible sheet while Freedman teaches a rolled sheet “since the device will still carry out its intended function dispersing fire suppression agent regardless of whether the sheet is rolled up or folded.” The fact that both devices will carry out their intended function is completely immaterial to the issue of patentability. In this application, the Declaration of Royse McKim shows that the present invention does in fact have significant advantages over Freedman, but that is also not required. Different novel and non-obvious methods that accomplish the same function can be patented even if the later filed application does not function any better than the alternative patented method. Equating whether the devices function as intended with the issue of whether Applicants’ invention is novel or nonobvious obviously improper.

Here, the rejected claims all contain limitations which are not described or taught by the cited references and the Examiner has failed to provide any reasonable rationale supporting the combination of references. Accordingly, Applicants respectfully request that the § 103 rejection be withdrawn.

Claim Rejections under 35 U.S.C. § 102

Claims 27 and 28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,209,837 to Freedman (Freedman). Although Applicants believe that the Examiner’s interpretation of the claim language as including the flexible sheet of Freedman is incorrect and unreasonable, Applicants have nevertheless amended claim 27 in an effort to expedite prosecution. Claim 27 has been amended to require that the flexible sheet when unrolled includes at least one pocket for containing the fire suppression agent. This limitation is not taught by Freedman.

Accordingly, Applicants respectfully request that the § 102 rejection of claims 27-28 be withdrawn.

All Remaining Claims

Applicants submit that all remaining claims rejected under 35 U.S.C. § 102 or 35 U.S.C. § 103, being dependent from claims allowable for reasons stated above, are also allowable. Accordingly, Applicants request that the objections to these remaining claims also be withdrawn.

Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific objection, issue, or comment does not signify agreement with or concession of the rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

If the Commissioner determines that any additional fees or extensions are required, Applicant request that such extensions be granted and any fees be charged to Deposit Account 50-1635.

Applicants submit that all claims in the application are now in condition for allowance, and Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Date: November 22, 2010

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